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OLAF ZENKER

WHITE CLAIMANTS
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Max Planck Institute for Social Anthropology, PO Box 110351,
06017 Halle/Saale, Phone: +49 (0)345 2927-0, Fax: +49 (0)345 2927-402,
<http://www.eth.mpg.de>, e-mail: workingpaper@eth.mpg.de

White Claimants and the Moral Community of South African Land Restitution¹

*Olaf Zenker*²

Abstract

South African land restitution, by way of which the post-apartheid state compensates victims of racial land dispossession, has been intimately linked to former homelands: prototypical rural claims are those of communities that lost their rights in land when being forcibly relocated to reserves and they now aspire to return to their former lands and homes from their despised ‘homelands’. However, white farmers, who were also dispossessed (although usually compensated) by the apartheid state in the latter’s endeavour to consolidate existing homelands, have lodged restitution claims as well. While the Land Claims Court has principally admitted such restitution claims and ruled upon the merits of individual cases, state bureaucrats, legal activists, as well as other members of the public have categorically questioned and challenged such claims to land rights by whites. Focussing on white land claimants effected by the establishment of former KwaNdebele, this paper investigates the contested field of moral entitlements emerging from divergent discourses about the true victims and beneficiaries of apartheid. It pays particular attention to land claims pertaining to the western frontier of KwaNdebele – the wider Rust de Winter area, which used to be white farmland expropriated in the mid-1980s for consolidation (that never occurred) and currently vegetates as largely neglected no-man’s-(state-)land under multiple land claims. Being the point of reference for state officials, former white farmers, Ndebele traditionalists, local residents, and other citizens, this homeland frontier is hence analysed as a fateful zone of contestation, in which the terms of a new South African moral community are negotiated.

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² Olaf Zenker, Institute of Social Anthropology, University of Bern, Laenggassstrasse 49a, 3012 Bern 9, Switzerland. From February 2009 to June 2013 he was an associate of the Max Planck Fellow Group “Law, Organisation, Science and Technology (LOST)” at the Max Planck Institute for Social Anthropology, Halle/Saale, Germany. E-mail: zenker@anthro.unibe.ch.

Introduction

South African land restitution, by way of which the post-apartheid state compensates victims of racial land dispossession, has been intimately linked to former homelands (also called Bantustans): prototypical rural claims are those of African³ communities that lost their rights in land when being forcibly relocated to reserves and they now aspire to return to their former lands and homes from their despised ‘homelands’ (see e.g. James 2007; Walker 2008; Zenker 2011, forthcoming b, forthcoming c). This is made possible by a profoundly transformed politico-legal order, enshrined in the new *Constitution of the Republic of South Africa* (Act 108 of 1996) comprising a property clause that explicitly demands, in section 25(7), the restitution of former land rights to the extent provided by an Act of Parliament.

The Act in question – the *Restitution of Land Rights Act* (Act 22 of 1994) – defines a set of criteria, according to which claimants are entitled to restitution, i.e. restoration of the land or equitable redress. The claimant can be a dispossessed individual (or his/her direct descendant) or a community, defined through past rights in land derived from shared rules determining access to land held in common by such a group. The claimant had to be dispossessed after 19 June 1913⁴ because of racially discriminatory laws and practices. Finally, claimants must not yet have received just and equitable compensation, and they had to lodge their claim before 31 December 1998.⁵ Significantly, restitution was explicitly not limited to former freehold ownership of land, but also included unregistered rights of labour tenants and sharecroppers, customary law interests, and rights of beneficial occupation of not less than 10 years prior to dispossession. Simultaneously co-existing and historically accumulated rights for the same piece of land were thus recognised as valid, allowing for the emergence of overlapping land claims that have often complicated the settlement process (see below). The Restitution Act further established the Commission on Restitution of Land Rights, including the Chief Land Claims Commissioner, the Regional Land Claims Commissioners, as well as the specialist Land Claims Court (LCC) as its key players.

Since 1995, Commission officials have thus validated and verified lodged claims and, if legitimate, mediated between (typically black) claimants and (usually white) landowners. Once a claim is accepted as valid, claimants then have the right to choose between financial compensation, alternative land, or restoration of their original land (if deemed feasibly by the state). If restoration of the land is desired by the claimants and declared feasible, state officials try to settle with the current landowners on a largely market-oriented agreement, in which the state buys the land and, based on certain conditions, hands it over to the claimants. Originally, the LCC was established to

³ Under apartheid, everyone in South Africa was classified according to four major racial classifications as defined by the *Population Registration Act* (Act 30 of 1950): namely as “white”, “native” (subsequently “Bantu”, subsequently “black”), “coloured”, or “Indian”. However, in the critical South African literature, the term “black” came to be used to include all those disenfranchised and not classified as “white”, reserving the term “African” for those categorised by the colonial state as “native/Bantu/black” (see e.g. Platzy and Walker 1985: xiii). I follow this latter convention of using “African”, “Indian”, “coloured” and thus use “black” (as inclusive of the previous three categories) and “white” to describe the different social groups that were identified as ‘distinct’ under apartheid and continue to have a social existence, while acknowledging, of course, the dilemma that the inevitable usage of these socially constructed terms might reinforce their alleged ‘reality’ as biologically predetermined categories.

⁴ This was the day of the promulgation of the *Natives Land Act* (Act 27 of 1913), first legalising massive, country-wide dispossessions by introducing “racial” zones of possible landownership and by restricting “black” reserves to only 7 per cent of South African land (later to be extended to 13 per cent).

⁵ In February 2013, President Jacob Zuma announced in his “State of the Nation Address” that the government will re-open the lodgement of new land restitution claims. At the time of writing (December 2013), the Restitution of Land Rights Amendment Bill, providing for a new cut-off date for lodgement (31 December 2018) is still undergoing the legislative procedure.

grant restitution orders in every case. However, owing to the slow progress in handling claims, amendments to the Restitution Act shifted the judicial to an administrative approach in 1999. Now, the minister, and by delegation the Land Claims Commissioners and their officials, have the power to facilitate and conclude settlements by agreement, and only claims that cannot be resolved this way take the judicial route through the Court (see Zenker 2012b and in preparation b).

In the course of 14 months of ethnographic fieldwork, conducted between 2010 and 2013, I traced land restitution within and between these state institutions as well as regarding selected land claims all related to the former homeland of KwaNdebele, studying it as an exemplary site for restitution, where the moral modernity of the new South African state has been contested, renegotiated, and made (see Zenker 2011, 2012a, 2012b, 2013).⁶ I found that the vast majority of all land claims were put forward by black people. However, a few restitution claimants are also white, even though it is very difficult to obtain exact figures or identify specific cases, since claimants are not classified or distinguished – at least officially – on the basis of race. It thus took me quite some time to identify, through my Commission contacts, a number of white land claimants in connection to KwaNdebele, two of their cases, and rather different ones, I will present below.

Generally speaking, white claimants in rural areas prototypically are former farmers, who were dispossessed of their lands by the apartheid state in its endeavour to build and consolidate the evolving homelands. Rural white claimants are thus intimately linked to the creation of the former Bantustans. Given that these farmers were usually the titled owners of the land, the apartheid state had to expropriate and compensate them or used such a threat to entice them into a forced sale. Such former white landowners typically claim in the restitution process that they were undercompensated. They hence demand financial compensation amounting to the difference, in today's terms, between the actual value of their farms at the time of dispossession and the compensation paid in the past.

As we will see, the Land Claims Court has principally admitted restitution claims by whites as legal and ruled upon the merits of individual cases. However, state bureaucrats, legal activists, as well as other members of the public have categorically questioned and challenged such land claims by whites on moral grounds. Focussing on white claimants effected by the establishment of former KwaNdebele, this paper investigates the contested field of moral entitlements as emergent from divergent discourses about true victims and beneficiaries of apartheid. Put differently, given that individuals “have beliefs about the sorts of beings that should be treated justly” and that “moral values, rules, and considerations of fairness apply only to those within the boundaries for fairness” (Opotow 1990a: 3; see also Opotow 1990b and 1995), such boundaries effectively circumscribe the limits of what actors imagine as their acceptable “moral community” (Hegtvedt and Scheuerman 2010: 340). South African land restitution can thus be interpreted as continuously renegotiating and redefining the contours of the moral community of former victims of apartheid in need of redress, from which former beneficiaries are necessarily excluded. In this process, white claimants constitute a classificatory anomaly, as they *individually* claim victimhood while *categorically* belonging to the formerly privileged race. As such, their land claims offer a particularly useful entry point into analysing the contested production of land restitution's moral community and its underlying histories of victimhood.

⁶ See also Zenker forthcoming a, forthcoming b, forthcoming c, forthcoming d, in preparation a, in preparation b.

As Henrik Ronsbo and Steffen Jensen (2014) note, the presence of “victims” typically refers to experiential forms of suffering, often perceived as objectified and passive, whereas “victimhood” is more of a political construction highlighting subjects’ heroic agency and intentions. Invoking the notion of “histories of victimhood”, they suggest tracing the mutual and often conflictual interrelations between both aspects over time.

“[I]n the figure of the victim resides an experience of a particular moral value that, as it becomes entextualized and circulates in conflicted social fields, gives rise to sets of questions and dilemmas. These include the commensurability of the status of different victims, the authenticity of the experience of being a victim, the ways such claims reflect on the agentic potential of the subject, and how they may deny other subjects access to recognition.” (Ronsbo and Jensen 2014: 5)

Different versions of such histories of victimhood are evoked in contested constructions of the moral community of South African land restitution. Yet, probably nowhere do the ambiguities and dilemmas arising from this process become more apparent than in the frontier zones of the former homelands, to which white rural claimants are inevitably linked (see above).

Within African Studies, the notion of ‘frontier’ as a fuzzy-bounded borderland of possible futures is most closely linked to the work of Igor Kopytoff. In his essay on “The Internal African Frontier” (Kopytoff 1989b), introducing an edited volume on the reproduction of traditional African societies through frontier dynamics (Kopytoff 1989a), Kopytoff adopts and reworks the classic “frontier thesis” by Frederick Jackson Turner (1961 [1893] and 1922) on the United States of America. Focussing on the tidal frontier line of European settler societies continuously moving towards the American West and colonising alien lands on their way, Turner argues that the American frontier experience released pioneers from European mind-sets and thereby forged, almost deterministically, the peculiarly American national character, marked by egalitarian, democratic, aggressive, and innovative features. Kopytoff takes up this model as a useful analytical framework, yet insists on the exceptional character of the innovative American frontier; by contrast, many frontiers – especially “the internal African frontier” – are seen to rather have conservative functions, reproducing metropolitan social models in emerging frontier communities (Kopytoff 1989b: 3–17, 75–78). It is especially the “internal” or “interstitial” aspect of Kopytoff’s approach that is of interest here, referring to “politically open areas nestling between organized societies but ‘internal’ to the larger regions in which they are found” (Kopytoff 1989b: 9). In this sense, the “internal frontier” can be described as a place characterised by the relative absence of a single dominant institution (such as a state) but rather by the presence of multiple institutions and, at times, even an institutional vacuum within a larger region, where actors intensely negotiate and construct desirable social orders on the basis of their individual understandings of what constitutes “a good society” (Kopytoff 1989b: 12–13).

As shown in the following, the former KwaNdebele – like most former homeland areas in South Africa (see Jensen and Zenker, in preparation) – can be seen as a prime example of such an internal frontier zone, where – in the context of institutional pluralism and a state spread thin on the ground – various South African actors have engaged with particular verve in the fateful activity of reconstructing the contours of their moral community. In a South Africa still strongly segregated on the basis of race, it is thus within the former heartland of state-imposed ‘African-ness’ that South Africa’s moral community is renegotiated in racial terms.

This paper follows this process through a case study of two land claims by whites pertaining to the western frontier of KwaNdebele – the wider Rust de Winter area, which used to be white farmland expropriated in the mid-1980s for consolidation that never occurred and currently vegetates as largely neglected no-man’s-(state-)land under multiple land claims. In the first section, I briefly introduce the conflictual history of the KwaNdebele homeland and use this as a springboard for presenting the land claim by a certain Wessel Albertus Vermaas,⁷ who has requested an exceptionally high amount of financial compensation in addition to what he already received from the apartheid government. An extraordinary case by many standards, this claim can nevertheless be treated as iconic for precisely those characteristics that have led critics to exclude whites from land restitution’s moral community. This is the topic of the next section, where I give an overview of the range of arguments about white claimants’ moral status. This leads to the question, whether it is at all conceivable within the morally charged climate of land restitution to accept individual victimhood for white claimants, who categorically benefitted from apartheid. The third and fourth sections present the case of Abraham (Braam) Viljoen – the identical twin of Constand Viljoen, the former Chief of the South African Defence Force and political leader of the right-wing Freedom Front. Braam Viljoen’s left-liberal anti-apartheid activism, to my mind, instantiates such a moral case of individual victimhood. Again an exceptional land claim by many standards, Braam Viljoen’s case is iconic for the opposite end of the spectrum of white claimants, whose moral legitimacy is arguably hard to deny. However, his claim has been rejected, stalled, and endlessly delayed for many years, thus excluding him from South Africa’s moral community so far, to which he formerly belonged during the pan-racial struggle against apartheid. Morally objecting in principle to this post-apartheid racialisation of South Africa’s moral community through state-driven land restitution, I have tried as much as possible – and am still trying at the time of writing (December 2013) – to help Braam Viljoen to finally receive official recognition of, as well as redress for, his history of victimhood under apartheid.

More Bucks for Bucks in Former KwaNdebele

Situated to the north-east of Pretoria between Groblersdal and Bronkhorstspuit, the former KwaNdebele homeland developed as the 10th and last Bantustan under apartheid, proclaimed as the official “home” of the Ndebele⁸. Initially, it had not been part of the nationalist plan for ethnic homelands, as the government expected the Ndebele to be incorporated in the surrounding Bantustans of Lebowa and Bophuthatswana (Surplus People Project 1983: 51). However, in the late 1960s, the first hints to an Ndebele Bantustan emerged, when a number of tribal authorities were set up for the Ndebele, mostly in Lebowa and Bophuthatswana (Platzky and Walker 1985: 179). In 1972, the South African government released plans for the creation of KwaNdebele (Surplus People Project 1983: 48). On 19 July 1974, the first Ndebele regional authority was established, to be followed by a second regional authority on 7 October 1977. The Ndebele

⁷ I have been unable to anonymise actors whose names were already in the public domain through media coverage, court files, and publications. In other cases, informants did not wish to remain anonymous. However, whenever possible and desired by my informants, I have not revealed their identity.

⁸ The overall Transvaal Ndebele have been classified into Northern and Southern sections, of which the Northern Ndebele subsequently came to be substantially influenced by Northern Sotho language and cultural forms. Thus, the name “Ndebele” is often used as shorthand only for the Southern section, as is the case in this text (see Delius 1989: 228–229).

Territorial Authority was installed on 24 November 1977; legislative assembly status followed on 1 October 1979. Finally, on 1 April 1981, KwaNdebele received rights as a self-governing state in terms of the *Bantu Homelands Constitution Act* (Act 21 of 1971) (Surplus People Project 1983: 47–52; McCaul 1987: 3).

The territory of KwaNdebele comprised an expanding collection of state-owned farms and parts of the neighbouring Bantustans Lebowa and Bophuthatswana. This required several waves of territorial consolidation, in which strategically placed land was bought by the state to join other detached portions to form larger blocks, while adjacent areas belonging to other homelands were excised and also added to KwaNdebele (Platzky and Walker 1985: 178–179; Christopher 2001: 73–75). Apart from announcing the expropriation of white-owned farms in the area, the first consolidation proposal in 1975 envisioned the eastern section of Bophuthatswana, the district of Moretele 2, as well as the Moutse area from Lebowa to be excised and incorporated into KwaNdebele (Platzky and Walker 1985: 179). Besides aiming to fully incorporate Moutse into KwaNdebele (after it had been officially excised from Lebowa in 1980), the second consolidation proposal of 1983 focussed primarily on white-owned land to the south-west of then existing KwaNdebele rather than the adjacent Bophuthatswana (Platzky and Walker 1985: 179; McCaul 1987: 57–61). Finally, the last consolidation plan of 1985 concentrated mainly on the expropriation of the irrigated and highly productive white-owned farmland in the Rust de Winter area on the western border of KwaNdebele and on the irrevocable incorporation from Lebowa of recalcitrant Moutse (McCaul 1987: xii, 61–76). As is to be expected, these consolidation processes, and the massive relocations that accompanied them, caused vehement opposition and much bitterness on all sides (except, to some extent, among Ndebele leaders): in Lebowa and Bophuthatswana, among local white farmers and, of course, among “the inhabitants of communities being shuffled between various administrations” (McCaul 1987: 57; see also Platzky and Walker 1985: 179).

One of the white farmers, who was expropriated in the early 1980s on the more and more encroaching western frontier of KwaNdebele, was Wessel Albertus Vermaas. A lawyer by profession, he had owned portions of both the farm Zandspruit 189 JR⁹ (measuring in total 1,146.35 hectares) and the neighbouring farm Christiaansrus 182 JR (measuring 1,655.46 hectares) south to the Elandsrivier linking the Rust de Winter Dam and the Rhenosterkop Dam. Zandspruit 189 JR was expropriated by the Notice of expropriation No. 408/84 dated 5 November 1984 in favour of the government of KwaNdebele and transferred as such by way of the Deed of Transfer NO.T18478/85 dated 30 May 1985; Vermaas received ZAR 982,500.00 in compensation. Afterwards, his farm Christiaansrus 182 JR was also expropriated by the apartheid government on 30 May 1985. Vermaas opposed this expropriation and filed suit against the government. However, after the matter was scheduled to be heard on 22 May 1987, the claimant withdrew the action. He subsequently received an amount of, again, ZAR 982,500.00 as compensation for this farm.¹⁰

After apartheid ended, Vermaas lodged a land claim on 11 December 1998, demanding restitution of the land, its improvements, and all the game he had lost, simultaneously tendering repayment of the financial compensation he had received in the past.¹¹ However, the land claim

⁹ Since many farm names are very common throughout South Africa, an additional number and combination of two letters (such as “189 JR”) are used to identify each and every farm in the Deeds Registry.

¹⁰ See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07), sections 1–10.

¹¹ See “Land Claims Form” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07).

(registered under reference no. Z0024) was dismissed by the responsible Regional Land Claims Commissioner for Gauteng & North-West on 18 August 2003, since the past compensation was declared just and equitable, hence excluding the claim on the basis of section 2(2) of the Restitution Act.¹² Vermaas did not accept this dismissal, insisting that – in addition to undercompensation for the land itself – the game on his farms as well as the farms’ future potential constituted unregistered rights in land that constituted claims for further compensation. As the Commission contested this, Vermaas finally made use of his right, enshrined in the Restitution Act, to have his case reviewed by the Land Claims Court under the case number LCC 73/07.¹³ Subsequently, an agreement was reached (made an LCC order on 13 May 2008) that the Commission shall refer the matter to the Land Claims Court for adjudication taking place on 27 May 2008.¹⁴

In his Referral Report, the then responsible Regional Land Claims Commissioner for Mpumalanga (as the case had meanwhile been transferred to that provincial office), Peter Mhangwani, summarised the matter as follows:

“Whether a Game and a Future Potential of the Game Ranch constitutes a right in land as contemplated in the Restitution of Land Rights Act No. 22 of 1994. Whether the compensation of R1965 000.00 received by the claimant was just and equitable as contemplated in section 25(3) of the Constitution.”¹⁵

All in all, as the Referral Report summarised the claimant’s rather unusual demands, Vermaas requested a total of ZAR 81,840,762.00 (ca. 10.5 Mio US \$ on the date of referral, 27 May 2008) in compensation for the land, the game, goodwill, future potential, as well as improvements on the farm to be added to the compensation of ZAR 1,965,000.00 he had already received from the apartheid state in the 1980s.¹⁶ Of these almost 82 million South African Rand demanded as additional compensation, game constituted the largest single item (ZAR 42,990,785.00), which the white claimant evidently felt entitled to demand. When I last researched the case in March 2012, it was still pending in the Land Claims Court, but even in the field of restitution, where exploded land prices have already caused enormous restitution costs for the state, the demanded total of 82 million South African Rand is a mind-boggling sum for any individual claimant. This is even more so considering the wider South African situation, in which severely limited resources must be equitably spent on other expensive government budget items such as public health, education, and economic development.

Contesting the Boundaries of South Africa’s Moral Community

Land claims by whites like the Vermaas case, arguably iconic in its excessiveness, are at the centre of contested debates about the moral entitlements to land restitution in the new South Africa, embedded in divergent discourses about true victims and beneficiaries of apartheid. Take, for

¹² See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07), sections 4, 12 and 29.

¹³ See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07), section 30.

¹⁴ See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07).

¹⁵ See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07), section 33.

¹⁶ See “Referral Report” in *Vermaas v. Mpumalanga Regional Land Claims Commissioner and Another* (LCC 73/07), sections 5, 7 and 10.

instance, the former Regional Land Claims Commissioner for Mpumalanga and Northern Province, the late Durkje Gilfillan. A white, left-liberal, human rights and land activist throughout the 1980s, she had worked for the Legal Resources Centre (a public interest legal NGO) in Pretoria since 1992, before serving intermittently as Regional Land Claims Commissioner between 1997 and 2000.¹⁷ When we discussed the issue of “white land claimants” in 2010, Gilfillan expressed a strong and uncompromising position: she claimed that her approach as Commissioner had been to insist that while white people had evidently also been dispossessed “as a result of past racially discriminatory laws or practices” (see section 2(1)(a) of the Restitution Act), they themselves had not been racially *discriminated* against as whites – to the contrary, they had categorically benefited from these racially discriminatory laws and practices. Furthermore, white claimants had been properly compensated and also had had the legal means at the time of dispossession to have the amount of compensation be reviewed in court. Hence, Gilfillan claimed to have dismissed white land claims *tout court*, arguing that it was not the task of the Land Claims Commission to review past compensations as this could and should have been done at the time of dispossession. Gilfillan finally explained that the Restitution Act should have explicitly restricted the “Entitlement to Restitution” in section 2 according to “equity and justice”. This, Gilfillan claimed, would have excluded white claimants automatically. Yet, as the Restitution Act stands now, Gilfillan admitted, it is technically “colour-blind”.¹⁸

Several African officials currently working for the Commission expressed similar attitudes to me privately. Thus, a high-ranking public servant in the national office of the Commission in Pretoria argued that it was an irony of how land restitution had been institutionalised during the 1990s in both the new Constitution and the Restitution Act, that those who had benefitted under apartheid because of their race were now in the position to, yet again, benefit from the very process intended to undo the race-based injustices of the past. However, the same official also insisted that, as he strongly subscribed to the modern ideal of social contract, equality, and the rule of law, he did not allow this private attitude to bias his work in public service.¹⁹

Such critical attitudes towards white claimants are not isolated phenomena within the Commission on Restitution of Land Rights. This is illustrated by the fact that this organisation, in 2005, commissioned a Legal Opinion regarding the questions, whether it could be argued on the basis of legislation that whites are principally not entitled to make restitution claims and, if not, how the legislation could be amended in a constitutionally acceptable way to categorically exclude whites as claimants. As it turned out, the two commissioned advocates expressed the Legal Opinion that on the basis of the Restitution Act, as it stands, it cannot be argued that whites are not entitled to claims. Furthermore, it was submitted that the Restitution Act cannot be amended to exclude whites as claimants, because such an amendment would be struck down by the Constitutional Court.²⁰ Thus, the matter of legally excluding white land claimants was not pursued any further by the Commission.

It is important to emphasise, however, that there were also voices within Commission echelons that were more sympathetic towards white claimants. Cherryl Walker had been a long-term white

¹⁷ Interview with Durkje Gilfillan on 26 August 2010; see also Commission on Restitution of Land Rights 1997: 74.

¹⁸ Interview with Durkje Gilfillan on 26 August 2010.

¹⁹ Interview on 8 October 2010.

²⁰ *Legal Opinion: Ex Parte: The Commission on Restitution of Land Rights / In Re: Section 2(1) of the Restitution of Land Rights Act No 22 of 1994 (19 October 2005)*: sections 177.1-177.3 (in personal possession).

land activist during apartheid and served as the Regional Land Claims Commissioner for KwaZulu-Natal during its first term between 1995 and 2000. As she explained to me in 2010, she had believed in “due process” while working for the Commission, and still did so. Therefore, she advocated each land claim to be assessed purely on its individual merits, irrespective of the race of the involved claimants.²¹ I encountered similar attitudes among African officials currently working for the Commission. Everyone in the new South Africa was entitled to the same rights, I learnt; hence, white claimants had to be treated the exact same way as black ones. This was so, as Gusta Mbatha, a high-ranking female bureaucrat from the Mpumalanga office, emphasised quite strongly, not least in order to morally and legally distinguish the new South Africa from its apartheid past, which the restitution was, after all, trying to overcome.²²

In any case, the principal right of white claimants to the restitution of land rights has been tested and confirmed in the area of law. In a number of reported cases, the Land Claims Court has clarified that the Restitution Act does not principally preclude white claimants as long as they satisfy the requirements of the Restitution Act.²³ Thus, the merits of each case involving white claimants need to be established on an individual case-by-case basis. In some cases, the Land Claims Court ordered in favour of white claimants²⁴; in other cases, the Court ruled against restitution.²⁵ As a matter of fact, the case law on “so-called ‘white claims’” is even summarised in a Commission Handbook on the *Jurisprudence on Restitution of Land Rights in South Africa* (Tong 2007: 44–45) as one of the “main findings of the courts on restitution matters” in order to ensure that the Commission deals with white claimants in the legally correct way. Yet, even within the Land Claims Court, which has persistently made clear that restitution law explicitly includes white claimants as legally legitimate, moral doubts can be encountered. Thus a former LCC judge privately expressed a critical opinion regarding the morality of land claims by whites. He felt that such restitution claims were not morally right since the past expropriation, which such white claimants had suffered, had been effected by a system representative of white majority rule; in other words, it had been “their” government. Moreover, echoing Gilfillan’s argument, white people at the time did have legal means at hand to challenge state action, for instance the *Expropriation Act* (Act 63 of 1975). Nevertheless, it was acknowledged that whites could have experienced psychological and social loss through dispossession, too. All things considered, however, this judge thought it morally wrong for whites to have the right to claim restitution in the new South Africa – irrespective of the fact that, as a judge, he had of course to apply the law as it stands.²⁶

The perception that skin colour actually does make a difference in the restitution process is also shared on the other side of the divide, namely among potential or actual white claimants and their lawyers. When talking to Nico Prinsloo, a white farmer involved in land claims against farms he owned, we ended up also conversing about white claimants. As it turned out, he theoretically could have lodged a land claim himself, given that his grandfather had been dispossessed of farmland in the process of consolidating the Lebowa homeland. Although his family had been financially compensated, the land they lost had been their only grazing land for sheep, thus forcing them to

²¹ Interview with Cheryl Walker on 11 November 2010.

²² Interview with Gusta Mbatha on 29 August 2011.

²³ See *Department of Land Affairs v Witz (LCC152/98) (2000) ZALCC 42 (12 October 2000)*.

²⁴ E.g. *Randall and Another v Minister of Land Affairs, Knott and Another v Minister of Land Affairs (LCC136/99, LCC 01/00) (2002) ZALCC 18 (10 May 2002)*.

²⁵ E.g. *Department of Land Affairs v Witz (LCC152/98) (2000) ZALCC 42 (12 October 2000)*.

²⁶ Interview on 9 March 2012.

stop sheep farming altogether. Yet, after consulting with his lawyers during the 1990s, he ultimately decided against lodging a claim, since he and his advisers assumed that, as a white claimant, he would not be allowed to benefit from land restitution in the new “black South Africa” anyway.²⁷

Peet Grobbelaar, a white attorney usually representing white landowners against land claimants, but also occasionally acting for white land claimants, vehemently insisted that such a racial bias exists in the work of the Commission. According to him, the Commission intentionally delayed all claims that had been lodged by white victims of land dispossession. Evidently, Commission officials would not openly admit to this racism against white claimants, but would simply push white cases back again and again in the queue of the schedule. Although Commission officials were supposed to act as champions of claimants and would, of course, do so if claimants were black, white claimants actually had to defend their claim *against* the Commission that was supposed to help them. Therefore, Grobbelaar explained, as soon as a white claimant became his client, he immediately made use of the claimant’s right of Direct Access to the LCC, thus forcing the Commission to hand over the case to the Court, which, according to Grobbelaar, applies the law in a just way.²⁸

It is against this background that the somewhat cynical comments by another white claimant need to be seen, when discussing his experiences with the Commission. Being one of three cousins and co-claimants, whose fathers had been dispossessed of four farms near Marble Hall in the course of building the Lebowa Bantustan in the 1980s, Cornelis Uys stated cynically that the “new South Africa” was now “colour-blind”; he and his cousins would hence be entitled to restitution, too, just like anyone else. However, their actual experiences looked quite differently: when I first met them in October 2010, the Uys family could only report a 15-year-long history of encounters with Commission officials that had not led them anywhere. Their attorney, who was not a specialist in land law, had written numerous letters, but to no avail. When I mentioned that other white claimants used the method of direct access to the LCC to push their cases forward (as I had learnt, among others, from Grobbelaar), they listened attentively. When I came back to South Africa almost one year later, they had become clients of Peet Grobbelaar, too, and had filed an application at the LCC.²⁹

This brief overview shows that while the question of the *legality* of land claims by whites was decided favourably by the courts, quite a diverse spectrum of perspectives has persisted on the *morality* of such restitution claims. On the one hand, these different attitudes comprise an outright rejection of any moral right of whites to claim restitution, given the collective and categorical status of whites as beneficiaries of apartheid. On the other hand, some have advocated the moral inclusion of white claimants on the grounds of the basic belief in equality for all and a colour-blind rule of law in the new South Africa. A slight variation of this latter approach has consisted in the declared intention to treat whites as equals in order to explicitly set apart the new South Africa as a polity founded on a new and decidedly different morality compared to the one on which its colonial past had been built. Depending on which discursive constructions (including histories of victimhood) are evoked, white claimants are thus either excluded from or included into the moral community of South African land restitution.

²⁷ Interview with Nico Prinsloo on 11 September 2010.

²⁸ Interviews with Peet Grobbelaar on 10 September 2010 and 31 August 2011.

²⁹ Interviews with different members of the Uys family on 11 October 2010 and 18 August 2011.

In the different positions presented above, moral exclusion was explicitly related to a discourse of whites as collective beneficiaries of apartheid, whereas advocates of moral inclusion rather emphasised the justness of equality as a value in itself. Hence, histories of white victimhood *as such* did not actually figure. Thus, ultimately, the question remains: is it morally admissible for whites to claim individual victimhood with regard to apartheid politics, even though these politics inevitably turned them into collective beneficiaries? In other words, can there be a restitution claim by whites that does not intrinsically violate the boundaries of a new moral community in South Africa?

The Prodigal Twin

On 28 October 1933, Abraham (Braam) Carel Viljoen was born in the then Eastern Transvaal, about half an hour earlier than his identical twin brother, Constand Laubscher Viljoen, but – as Braam Viljoen laughingly explained to me – “that was about the only time that I was first in our relationship”.³⁰ Their father was a farmer and their mother a teacher, both supporters of the South African Party/the United Party of Generals Botha and Smuts, and their upbringing was strict and austere (Boynton 1997: 235). Thus initially somewhat shielded from “the widespread ideological propaganda of the National Party”, Braam Viljoen recalled how he was strongly exposed to this ideology during his high school years in the late 1940s. After matric in 1951, both twins joined the newly established military gymnasium in Pretoria for a one-year training. However, in 1952, the ways of the brothers parted, when Braam Viljoen started studying Philosophy, Greek, and Theology at the University of Pretoria, planning to enter the ministry of the Dutch Reformed Church.³¹

By contrast, Constand Viljoen continued his military career and rapidly rose within the ranks of the South African Defence Force. In 1975, he was appointed Chief of the Army and, in 1980, Chief of the entire South African Defence Force, a post from which he retired in 1985 to then run a cattle farm in Northern Transvaal part-time.³² Described as a right-wing “model Boer” – “deeply religious, a heroic military leader”, “calm, intelligent, a strategist, a man of the *volk*” (Boynton 1997: 231) – Constand Viljoen became head of the directorate of the Afrikaner Volksfront in 1993, a right-wing umbrella organisation demanding a separate Afrikaner *volksstaat* (Sparks 2003: 148). Due to disagreements within the Afrikaner Volksfront about whether to maintain negotiations (Constand Viljoen’s approach) or withdraw from them (as favoured by the Conservative Party), an uneasy compromise was reached: while publically staying out of the transitional negotiations at the World Trade Centre and repeatedly threatening a “Third Boer War”, Constand Viljoen and a few other Volksfront generals were to secretly begin direct talks with the African National Congress (ANC) about the right-wing demand for an Afrikaner *volksstaat* (Sparks 2003: 148). Given Braam Viljoen’s very different political trajectory, bringing him into close contact with the ANC, combined with his good relations with the conservative farming community (see below) as well as with his identical twin brother, right-wing Constand could turn to his left-wing twin to facilitate these crucial encounters. More than 20 secret meetings followed, first including Nelson Mandela, then Thabo Mbeki, bringing about the idea to establish a Volkstaat Council as a statutory body to

³⁰ Interview with Braam Viljoen on 22 February 2012.

³¹ Interview with Braam Viljoen on 7 March 2012.

³² Interview with Braam Viljoen on 7 March 2012.

negotiate the establishment of a *volkstaat* after the first democratic election (Sparks 2003: 154–159). After the failed battle of Bophuthatswana in March 1994 (Sparks 2003: 160–170), Constand Viljoen – confronted with “the stark choice between leading right-wingers into civil war or joining the election” – founded a new party, the Freedom Front, and took part in the first democratic elections on 27 April 1994 (Sparks 2003: 170). In 2001, he handed over the party leadership to Pieter Mulder.

Compared to his brother Constand, Braam Viljoen likened himself to the “prodigal son” of the New Testament (Luke 15: 11–32): while Constand had remained the deeply religious and steadfast “model Boer”, he himself had left behind the religious and political path of true Afrikanerdom and never came back.³³ Starting off as a pietistic Christian with the intention to become a minister and missionary for the Dutch Reformed Church, Braam Viljoen spent almost two years abroad between August 1960 and March 1962 while preparing for his PhD, which changed his thinking substantially. He first went to the USA, where he became aware of the extent to which pietistic Christianity and racial discrimination went hand in hand. During the second year in the Netherlands, he studied under Professor J.C. Hoekendijk in Utrecht, who had been active in the resistance against Nazi Germany and taught an openly political theology. Both left a deep impression on Braam Viljoen. When he returned to South Africa in 1962, he realised that he could no longer tolerate the racist politico-religious gospel of apartheid that prevailed in both the Dutch Reformed Church and among most professors of theology at local universities. Given the various arguments he had with influential members of his Church and at the University of Pretoria, Braam Viljoen found himself between a rock and a hard place, as the ministry no longer constituted a vocation or livelihood option and university employment also became more and more unlikely for this “tribal dissident” (Sparks 2003: 157).³⁴

With the help of one supportive theology professor, Braam Viljoen finally succeeded to secure some employment at the University of South Africa (UNISA) in Pretoria, where he worked as a lecturer in theology and church history for more than 2 decades. However, given that his financial situation continued to be precarious (he had to repay his student loan to the Church as he refused the ministry), Braam Viljoen also started engaging in beekeeping in 1963, as he could look after the bees and move the hives outside work hours on weekends and at night. In 1968, another income opportunity emerged, when his father-in-law decided to stop farming cattle on his portion 3 of the farm Bezuidenhoutskraal 166 JR (measuring 1,057.26 hectares) in the Rust de Winter area. Since his wife Mary and her three siblings did not want to farm themselves, but still preferred to keep the farm in family possession for sentimental reasons, it was agreed that Braam Viljoen could lease the cattle farm for an annual rent until he, as the only possible buyer, would be finally able to purchase the portion from his in-laws. So he did, all the while continuing to teach theology at UNISA and beekeeping until the 1980s.³⁵

Besides his professional life, Braam Viljoen became a very active member of the South African Council of Churches (SACC), an interdenominational forum and anti-apartheid organisation under the successive leadership, among others, of Desmond Tutu, Beyers Naudé and Frank Chikane. In addition, Braam Viljoen engaged in liberal politics, standing as candidate for the Progressive Federal Party (PFP) in Waterkloof/Pretoria in the parliamentary elections held on 6 May 1987. To

³³ Interview with Braam Viljoen on 22 February 2012.

³⁴ Interviews with Braam Viljoen on 30, 31 August and 1 September 2011.

³⁵ Interviews with Braam Viljoen on 30, 31 August and 1 September 2011.

do that, however, Braam Viljoen had to take a quite far-reaching decision: in order to stand as a candidate, he had to quit his employment at UNISA with no option to return, which was risky because if not elected he would lose his main income and the prospect of a reliable pension. Braam Viljoen did in fact lose the election by a slim margin to the candidate of the National Party, Org Marais, leaving himself without employment and pension.³⁶ This situation was aggravated by the fact that he was simultaneously losing legal access to his grazing land in Rust de Winter, as we will see below. Braam Viljoen then ended up working for the Northern Transvaal Peace Committee and, subsequently, the Institute for a Democratic Alternative for South Africa (IDASA), a pro-democracy lobbying group founded by the former leader of the Progressive Federal Party, Frederik van Zyl Slabbert, after the latter had quit Parliament in 1986 in order to try bringing Afrikaners and the ANC closer together. In this context, Braam Viljoen was also one of the first Afrikaners to meet with the exiled ANC, when he travelled with Slabbert to Dakar, Senegal, in 1987 for a clandestine meeting with then outlawed ANC leaders (Sparks 2003:157).³⁷ In the course of his general political activism, Braam Viljoen faced open confrontation with the state:

“His links with an anti-homelands underground organization in the mid-1980s [in KwaNdebele – see below] led to a warrant for his arrest, and years later he discovered that his name had been on the same death-squad hit list as that of [his friend] David Webster, the Johannesburg academic assassinated in May 1989. It was his work with the homelands’ War Against Independence campaign that first brought him to politics and made him realize just how untrustworthy and underhanded the government really was.” (Boynton 1997: 233)

Being an “atypical Afrikaner” – as his brother Constand once described him towards Thabo Mbeki – Braam Viljoen stuck out like a sore thumb within the strongly Christian community of 63 white farming households in the Rust de Winter area, whose internal political differences otherwise centred on the question whether locals supported the National Party or the even more right-wing Conservative Party. Nevertheless, Braam Viljoen got along well with his neighbours, many of whom even helped him during his electoral campaign for the Progressive Federal Party in 1987. Thus, despite their different political positions, Braam Viljoen was an active member of the local Elandsrivier branch of the conservative Transvaal Agricultural Union (TAU), as this was the only agricultural union available, and he even served as the chairperson of one of the two local branches between 1973 until 1989.³⁸

The Rust de Winter area has long since had a reputation for fertile soils, sufficient water supply through the Elandsrivier, abundance of game, and the occurrence of great winter grazing (sweetgrass), which made the place into an almost perfect camp for a “Winter’s Rest” (as the name literally translates). During the 1930s/1940s, the South African government built the Rust de Winter Dam as a job creation measure for whites during economic depression, providing enough water for extensive irrigation schemes that came to develop alongside the Elandsrivier. With expanding irrigation technology and infrastructure as well as sufficient cheap labour in the nearby reserves at hand, Rust de Winter emerged as a highly productive farming region since the 1960s. Its products mainly included maize, wheat, cotton, and vegetables – as well as meat, especially beef. In the context of this local economic boom, the white farming community developed its

³⁶ Interviews with Braam Viljoen on 30, 31 August and 1 September 2011 as well as 18 March 2013.

³⁷ Interviews with Braam Viljoen on 30, 31 August and 1 September 2011.

³⁸ Interviews with Braam Viljoen on 30, 31 August and 1 September 2011 as well as 18 March 2013.

infrastructure to include two churches, a community hall, a primary school, a hospital, a post office, a police station, various shops, and a cooperative.³⁹

This was the situation in the 1980s, when the South African government declared its intention to incorporate white-owned farmland in the wider area into KwaNdebele. Discussions surrounding the 1983 consolidation plans for KwaNdebele had already included suggestions to advance into the Rust de Winter area. However, the strong protest of the local farmers' community under the leadership of, among others, Braam Viljoen led to the assurance that Rust de Winter would not be affected by this consolidation.⁴⁰ Yet, on 25 September 1985 the Minister of Constitutional Development and Planning, Mr Chris Heunis, announced the final consolidation proposals for KwaNdebele. 105,000 hectares were to be added to the homeland, including a large portion of Rust de Winter (34,000 hectares), but excluding the Rust de Winter Dam (McCaul 1987: 61).

“Questioned about the government’s extent of consultation with white farmers’ associations before the decision to expropriate the Rust de Winter farms, Mr Wilkens [the Deputy Minister of Development and Land Affairs] said that all the evidence given by affected persons in 1983 had once again been evaluated. The Rust de Winter community’s spokesman [i.e. Braam Viljoen] and the local community had been informed of the government’s decision. The government had evidently assured Rust de Winter farmers in 1983, following their protest against the 1983 proposals, that their farms would not be consolidated. However, to compensate KwaNdebele for the loss of the Nebo farms and Bloedfontein and Geweerfontein, the government was to hand over Rust de Winter. Farmers were reportedly bitter about the government’s renegeing on its promise and argued that together they employed between 5 000 and 7 000 local people from Moutse and Lebowa on their farms. It would also cost the government R150m to take them out of production.” (McCaul 1987: 63)

Despite combined and persistent resistance of local white farmers, the South African government insisted on consolidating Rust de Winter into KwaNdebele. After finally deciding against taking the government to court, more and more local farmers started to give in between 1987 and 1989. They either sold their land (usually under protest) or were expropriated and financially compensated by the state.⁴¹

This also happened to portion 3 of the farm Bezuidenhoutskraal 166 JR, which Braam Viljoen still leased from his in-laws for cattle farming. While his in-laws as the owners of the land were indeed paid out, Braam Viljoen (as the lessee) was not compensated in any form. Having no other place to go, he simply refused to leave and stayed on Bezuidenhoutskraal for another year and a half without any state permission. In 1989, two non-Ndebele African farmers, who had worked as labour tenants on neighbouring farms, were also expelled. Braam Viljoen invited them to move onto Bezuidenhoutskraal as well, since they had no other option to graze their cattle. Braam Viljoen and his African co-farmers, Philemon Phatlane and Simon Babedi, wanted to stay on this farm that was earmarked for inclusion into the KwaNdebele homeland. For this, Braam Viljoen could rely on the explicit support of the Ndzundza Ndebele King, David Mabua Mapoch

³⁹ Interviews with Braam Viljoen on 30, 31 August, 1 September 2011, 18 March 2013; with Kobus Germushuis on 27 January and 8 February 2012; and with Kerneels van der Walt on 3 March 2012.

⁴⁰ Interviews with Braam Viljoen on 30, 31 August, 1 September 2011, 18 March 2013; with Kobus Germushuis on 27 January and 8 February 2012; and with Kerneels van der Walt on 3 March 2012.

⁴¹ Financially, it did not make much of a difference to be paid out through either a forced sale or financial compensation following expropriation. Forced sales were simply less bureaucratic and involved less legal costs than expropriation. Thus, many farmers agreed to sell under the threat of expropriation – hence a ‘forced sale’ – once they realised that going to court would not save their land.

Mahlangu, in Weltevreden/KwaNdebele, and several other members of the royal council – including the Princes Cornelius, James, and Andries Mahlangu – because of the extensive help that Braam Viljoen and even conservative farmers in Rust de Winter had given to Ndebele citizens, subjects, and traditional leaders during the struggle against KwaNdebele Independence in the mid-1980s.

While set to become South Africa's fifth independent homeland in December 1986, “[i]n one of the most dramatic episodes of the nationwide unrest that has afflicted South Africa since September 1984, a massive popular uprising in KwaNdebele put an end (...) to these constitutional plans.” (McCaul 1987: 3) This was brought about by the combined efforts of bitter popular resistance against South African and KwaNdebele security forces, including the infamous vigilante group “mbokotho”, as well as the successful legal challenge to the legitimacy of Assembly Members supporting political independence (Abel 1995: 435–494; Phatlane 2002).⁴² This complex situation forged an unlikely and rather unique alliance of resistance, comprising politicised youth and supporters of the banned ANC and the anti-apartheid umbrella organisation, United Democratic Front (UDF), dissatisfied KwaNdebele civil servants, the KwaNdebele royal family, especially the Princes James, Cornelius, and Andries Mahlangu as well as King David Mabua Mapoch Mahlangu, white left-liberal activists – including Braam Viljoen – as well as members of the conservative white farming community in Rust de Winter (see Delius 2007: 425). In 1987, this also led to the formation of a body of anti-apartheid chiefs, called the Congress of Traditional Leaders of South Africa (Contralesa), the first members of which were 38 chiefs and sub chiefs from KwaNdebele and Moutse who had resisted apartheid (Delius 2007: 427).

Kobus Germushuis, a white farmer in Rust de Winter at the time, recently explained to me that the deeply religious and conservative farmers in the area – like himself – had been deeply appalled by the extent of brutal and illegitimate violence that the South African government either allowed the KwaNdebele government to exercise against its own residents or that South African forces even committed themselves: “we could not tolerate this to happen in a Christian country”, he recalled.⁴³ Thus, several of these conservative farmers, in principle supporters of racial segregation, joined forces with Braam Viljoen, a strong opponent of the homeland system, in order to protest against the South African government, help African activists to enter and leave KwaNdebele, hiding them, and publicising within South Africa what was happening inside the homeland. One of these white farmers and vice-chairperson of the farmers' association in Rust de Winter, Kerneels van der Walt, is also remembered for donating four head of cattle to the royal kraal and the people in Weltevreden in order to celebrate the final victory against independence.⁴⁴

As Prince Andries Mahlangu, one of the few surviving royal activists and current chairperson of the Ndzundza Mabusa Traditional Council in the former KwaNdebele, recalled, Braam Viljoen and other white farmers from Rust de Winter played a significant role, when turmoil in KwaNdebele was at its height. According to Mahlangu, Braam Viljoen and his friends provided financial help, transport, and food, organised secure accommodation and hide-outs, when activists were under

⁴² Supported by the Legal Resources Centre, six Ndebele women successfully challenged in 1987–1988 the validity of the 1984 KwaNdebele constitution, which had disenfranchised women in the homeland, thus also invalidating the results of the 1984 elections and effectively dissolving the elected Assembly that still pressed for political independence (Phatlane 2002: 414–415).

⁴³ Interviews with Kobus Germushuis on 27 January and 8 February 2012.

⁴⁴ Interviews with Braam Viljoen on 30, 31 August, 1 September 2011, 18 March 2013; with Kobus Germushuis on 27 January and 8 February 2012; and with Kerneels van der Walt on 3 March 2012.

threat of arrest and torture, brought in the media to cover events in the mayhem of 1986, and also facilitated the contact to human rights lawyers, who eventually helped shatter the legitimacy of KwaNdebele. “These were very good people”, Andries remembered, “and especially Braam; I respect the old man, he was a role model”.⁴⁵ Former friends and comrades from apartheid times, black and white, have thus continued to include Braam Viljoen into their own moral community; however, this situation was to change substantially with the end of apartheid.

The Fateful Frontier of Post-Apartheid KwaNdebele

Although the 63 farming units in Rust de Winter were indeed finally expropriated during the late 1980s against the strong resistance of the local farming community, the actual consolidation with KwaNdebele never occurred. Like all other homelands, KwaNdebele was only officially dismantled and reincorporated into the Republic of South Africa with the first democratic election on 27 April 1994; but in the context of the transitional negotiations in the early 1990s, the anticipation of the coming political transformations brought much of local politics to a halt and the 1985 consolidation was never fully implemented. Therefore, the wider Rust de Winter area never joined KwaNdebele though it did become state land, and *de jure* remains such for the most part until today. Abandoned by their former white landowners, yet also largely neglected by the state during the uncertainties of its political transition, much of this formerly productive farmland with a functioning irrigation infrastructure became rapidly occupied by African people from KwaNdebele and beyond. Lacking the skills and capital to make commercial use of these farms, much of the infrastructure and implements were subsequently either sold or left to decay. Many of the former ploughing fields were not regularly cleared anymore, and have since slowly merged again with the encroaching bushland.

After 1994, the Department of Land Affairs did put some effort into the development of parts of Rust de Winter through a “Reconstruction and Development Programme (RDP)” for African commercial farming, but it failed for the most part due to insufficient funding, training, and continuation of support.⁴⁶ As late as 2006, when local African farmers were informed during a meeting with representatives of the Gauteng Land Reform Office that failure to pay leases would lead to state contracts not being renewed, many complained that their biggest problem actually was the unavailability of the state for contracting such leases in the first place.⁴⁷ All in all, it seems, the state has been largely absent in the region since the end of apartheid.

While the wider area thus developed into no-man’s-(state-)land increasingly neglected by the state, some Ndebele traditionalists have continued to insist on their right to take over the whole region under “customary rule”. In part, this emerged from agreements reached in the context of the 1985 consolidation plan to resettle Ndebele tribes from the nearby farms of Bloedfontein, Geweerfontein, and Kalkfontein into this area (McCaul 1987: 61). Moreover, the chief of the Litho Ndzundza Ndebele residing on the local farm Witlaagte 173 JR also lodged a land claim on 9 November 1995, demanding the restitution of 15 farms basically covering the whole of the Rust de Winter area. Although this restitution claim was dismissed by the Land Claims Commission, the

⁴⁵ Interview with Prince Andries Mahlangu on 16 February 2012.

⁴⁶ Interview with Braam Viljoen on 18 March 2013.

⁴⁷ Minutes of Meeting between the Gauteng Provincial Land Reform Office (GPLRO) and Rust de Winter Farmers on 3 February 2006.

claimants' right to have the dismissal reviewed in court was confirmed by the Supreme Court of Appeal in 2004; since then, as the current Chief Alfred Mahlangu in Litho claimed in March 2012, the case has been pending at the Land Claims Court.⁴⁸ However, according to the responsible Regional Land Claims Commission of Gauteng and North-West, this claim has been long abandoned.⁴⁹ Nevertheless, local farmers – among whom Braam Viljoen is the only white person left – experience their tenure as highly insecure, since other land affairs officials have repeatedly claimed that the Litho claim has to be solved first before their own land rights can be considered.⁵⁰

These neo-traditional assertions by local Ndzundza Ndebele chiefs also seem to have been the main reason, why Viljoen's, Babedi's, and Phatlane's plan to stay on the farm Bezuidenhoutskraal could not be realised in the early 1990s. After negotiations with the Department of Land Affairs, they were offered alternative grazing some 15 km away – initially at the farms Mamba Park and Klopperdam, and then in 1993 at section 4 of the farm Enkeldoornpoort. Following the advice of the Department, Viljoen, Babedi and Phatlane formed a company for leasing the land, while each partner retained his individual herd (as long as the former apartheid dispensation still existed only Braam Viljoen as the privileged white was allowed to sign the group lease contract). Since 1993, this loose joint venture had to renew its lease contract with the Department of Land Affairs virtually every year, which made long-term planning and capital investments through bank loans impossible. Furthermore, the contracts did expressly not include an option to buy the farm. Since their arrival on Enkeldoornpoort, Braam Viljoen has continuously covered the costs for all three partners. After the death of both African partners, however, tensions grew, as the sons of the former partners started refusing to cooperate in the necessary work such as fencing, dipping the cattle, and renewing the fire breaks, arguing that this was now the era of “black economic empowerment”. Moreover, competing land claims were lodged with regard to Enkeldoornpoort in addition to the Litho claim, which creates substantial tenure insecurity for Braam Viljoen and his partners until today. This situation is aggravated by the fact that, although being 80 years of age, Braam Viljoen is still financially dependent on farming, as he does not receive any pension.

Against the backdrop of these overall developments in Rust de Winter, Braam Viljoen lodged a restitution claim on 2 March 1997, together with an accompanying letter explaining the details of his claim. However, for several years, he received no response. Braam Viljoen's claim was then dismissed by a letter of the Regional Land Claims Commission of Gauteng and North-West dated 9 February 2006. In this letter, Braam Viljoen's case was (mis)construed as that of a labour tenant who had not been dismissed on the basis of racially discriminatory laws. Interestingly, the Commission file for his land claim also contains a research report dated 16 August 2006 (i.e. *after* the dismissal letter was written), which yet again (mis)construed Braam Viljoen's claim – this time as if he was claiming undercompensation on behalf of the former owners of the land, namely his in-laws (the Naudé family).

When I first met Braam Viljoen in August 2011, learnt about the details of his dispossession and saw the letter of dismissal, I agreed with him that this dismissal was legally inappropriate. According to the Restitution Act, Braam Viljoen was arguably dispossessed of land rights due to 20 years of occupation and the unregistered right for a long-term lease with the exclusive option to buy the portion of Bezuidenhoutskraal. Thus, Braam Viljoen and I went to see the responsible

⁴⁸ Interview with Chief Alfred Mahlangu on 7 March 2012.

⁴⁹ Interview with Malesela Moloto on 7 March 2012.

⁵⁰ Interview with Braam Viljoen on 18 March 2013.

project manager, Kenneth Matukane, on 1 February 2012, who immediately admitted that this dismissal was incorrect. Matukane stated that Braam Viljoen's claim had been part of a blanket dismissal of numerous cases in this area. He claimed that after the development of some new case law, all such claimants had been contacted and their cases been reopened around 2006 or 2007. However, Braam Viljoen never received such a letter and was also never contacted by any official from the Commission. In the course of further communication with the responsible legal officer at the Regional Land Claims Commission for Gauteng and North-West, Malesela Moloto, in February 2012, Braam Viljoen was advised to formally request a review of the dismissal by the Regional Land Claims Commissioner. For this purpose, Braam Viljoen was helped extensively by legal officers of the Commission to provide affidavits by himself, detailing his rights in land lost in the process, and by his in-laws confirming the details of the former lease agreement. These documents were compiled and delivered by early March 2012. Moloto then filed his legal recommendation on the basis of the documents and promised a decision by the Regional Land Claims Commissioner within seven working days.

However, this submission became apparently stuck within different sections of the Commission. Weekly enquiries since March 2012 by Braam Viljoen and myself did not yield any results. Then, in a letter dated 21 June 2012, Braam Viljoen was surprised to be informed by the Chief Director/Restitution Support of the Gauteng and North-West office, Lengane Bogatsu, that his claim could only be approved for validation, when all necessary information had been collected once more. Only then could a comprehensive report for approval by the Regional Land Claims Commissioner be compiled, entailing an in-loco inspection, oral evidence from Braam Viljoen, and archival information. Yet another letter, dated 28 August 2012, suddenly informed Braam Viljoen that "research on your land claim has been completed and the report is currently en-route to the Regional Land Claims Commissioner (RLCC) for approval". Since I knew the above-mentioned attorney Peet Grobelaar through my research, I asked him for help and he sent a letter on Braam Viljoen's behalf on 20 September 2012, requesting access to this research report. Despite continuous enquiries on a weekly basis, neither the research report nor any further progress materialised over the next months.

So far stubbornly refusing to give in to an interpretation of some officials' behaviour as based on a strategy of intentionally delaying further progress simply because he is a white claimant, Braam Viljoen started contemplating the possibility, which forced him, ultimately, to consider taking the legal route that other white claimants had taken before: namely direct access to the Land Claims Court. However, litigation is very costly for an 80-year old farmer still forced to farm. Most importantly perhaps, it also means accepting a reading of the situation, in which Braam has to give up imagining a non-racial moral community in South Africa to which he can truly belong.

When talking about his life in general, Braam Viljoen told me that he felt a bit like having ended as Voltaire's *Candide* in Africa: after extensive theological and philosophical travels, he had become more and more sceptical and agnostic, turning towards the soil and farming in his attempt to "cultivate the garden". Politically, he felt increasingly insecure and disappointed about what had become of his dream of a non-racial South African society of equals. It is here, where Braam Viljoen touched upon a personal sense of nostalgia, a longing for a past on the fateful frontier of former KwaNdebele, when he – the tribal dissident isolated from his kin and racial peers – could nevertheless portray himself as a moral citizen of a new and better South Africa:

“What I do miss is the sense of camaraderie and of mutual support and appreciation between white farmers and black ‘homelanders’ who made common cause in the fight against the homeland system. The pressures caused mutual friendship which lasted for some time, but have now faded in the new dispensation. In other words, what I miss is the effect that anxious moments and pressure had on white farmers and black ‘homelanders’ to join forces against what we considered to be evil.”⁵¹

Conclusion

The boundaries of the former KwaNdebele – as of most former homelands – could never crystallise into a stable imagery of exact borders, constituting shifting and fuzzy frontier zones from the inception of this homeland in the early 1970s until its final demise in 1994. Under the former dispensation, the South African government followed its high-modernist plan of grand apartheid, constructing through massive social engineering what it proclaimed to be a reconstruction of the natural order of cultural difference. Put differently, this frontier under apartheid became the place for forcefully (re)producing and instantiating metropolitan models based on the master categories of ‘race’ and ‘ethnicity’ at the expense of potentially cross-cutting similarities and differences in terms of politics, religion, morality, gender, and class that also existed on the ground. In response and resistance to this multilayered form of state violence, an unexpected alliance between radicalised youth, UDF and ANC supporters, Ndebele traditional leaders (often rather co-opted supporters of apartheid), white left-liberals, conservative white farmers, as well as Christian fundamentalists emerged in the mid-1980s. For them, the frontier made possible the imagination of a shared moral community delineated against the evils of apartheid, even though they hardly constituted a ‘church’ of *shared values* – that is, a “moral community” according to Émile Durkheim (2001 [1912]: 46) – regarding the aspired political alternative.

With the end of apartheid, the state, hitherto forcefully present through social engineering, retreated more and more from the frontier zones of former KwaNdebele, in particular from the western borderland sliding into the formerly white farmland of Rust de Winter. Since then, various actors with different agendas have moved into this no-man’s-land of multiplying and typically weak institutions (among which the local state has become but one) attempting to make the area their political and moral home: Ndebele traditionalists have attempted to transform the whole region into their kingdom of custom, as promised under apartheid, excluding not only whites but all non-Ndebele residents from their moral community. New African residents have moved into this neglected *de jure* state land, making residential and agricultural use of formerly commercial farmland in ways easily used in populist accounts of post-apartheid decay and demise. And numerous overlapping restitution claims by individuals and communities, blacks and whites, have created a complex texture, giving officials in the Land Claims Commission quite a hard time to unravel.

These land claims also include demands from former white farmers in the area, desiring either restoration of the original land lost during homeland consolidation or financial compensation. In this text I gave the example of the land claim by Vermaas, who demands the staggering amount of almost 82 million South African Rand for the game and future potential he lost through dispossession, on top of the nearly 2 million South African Rand he already received at the time of

⁵¹ Interview with Braam Viljoen on 4 March 2012.

expropriation. For many South Africans, differently positioned in the restitution process as state officials in the Commission on Restitution of Land Rights or judges in the Land Claims Court, lawyers and legal activists, claimants and members generally of the public, such demands are perceived as out of kilter with what any citizen of the new South Africa can morally desire. Put bluntly, such restitution claims by whites are often seen as iconic for precisely the despicable white self-enrichment that is made *legally* possible through land restitution, thereby facilitating illegitimate claims to victimhood and intrinsically violating the boundaries of any acceptable *moral community* for South Africa.

On the basis of presenting an exemplary spectrum of positions regarding the denial or acceptance of a moral entitlement for white people to also claim restitution, I showed that while opponents denied whites that entitlement on the basis of their categorical status as former racial beneficiaries under apartheid, supporters of land claims by whites rather rooted their position in the intrinsic value of an egalitarian rule of law. It remained to be discussed, therefore, whether it can be morally admissible for whites to claim individual victimhood with regard to apartheid politics, even though these politics inevitably turned them into collective beneficiaries. I offered the example of Braam Viljoen – the identical twin of Constand Viljoen, the former Chief of the South African Defence Force and political leader of the right-wing Freedom Front. Braam Viljoen’s left-liberal activism in opposition to apartheid, to my mind, actually does instantiate such a moral case. Having lost the rights of a cattle farming lessee in the Rust de Winter area in the late 1980s without any compensation, Braam Viljoen lodged a land claim that, until the time of writing, still has yielded no satisfactory solution. In March and April 2013, during two further months of fieldwork in South Africa, the Viljoen family, attorney Grobbelaar, and I strongly increased the pressure on the Land Claims Commission, threatening to take the case to the Land Claims Court. This eventually proved effective, and the land claim was finally recognised as valid by the Regional Land Claims Commissioner on 6 May 2013. However, since then the final implementation of this recognition through either land restoration or financial compensation was again held up within the state bureaucracy, caught up between officials, who do indeed seem to intentionally delay the process simply because Braam Viljoen is white (this interpretation is at least very difficult to avoid), and other civil servants, who apparently see legitimacy in his claim to individual victimhood.

In her study on South African land restitution, Cheryl Walker observes that the restitution process is generally haunted by a “master narrative”, depicting a simplistic version of black victimhood through land dispossession in ways that do not do justice to the complexities on the ground (Walker 2008: 11–29). As I have shown in this paper, the complementary “master narrative” for whites arguably constructs them as collective and categorical beneficiaries under apartheid, which seems to leave little room for any individual white victimhood. Inadvertently perhaps, such homogenising discourses have led to a stronger racialisation of the boundaries of South Africa’s moral community, at least within land restitution, than was the case during the pan-racial struggle against apartheid. Hence, future negotiations on the fateful frontier of former KwaNdebele might possibly benefit from being more prodigal in their offerings of moral citizenship across and truly beyond the racial divide.

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